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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEWARK (CHERRY HILL)

Date: MAR 19 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Costa Rica, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The director found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The director also found the applicant inadmissible pursuant to section 212(a)(9) of the Act. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband.

The district director found that the applicant had sent her passport to be stamped in Costa Rica, so that it misrepresented that she had interrupted her stay in the United States, and then presented the fraudulently stamped passport to gain admission to the United States. The director found that this rendered the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The director also found that the applicant was inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for over one year.

Yet further, the director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the waiver application.

Part 3 of the Form I-290B appeal counsel submitted reads, in its entirety,

Application bore her burden of proof in showing extreme hardship to her husband.

[redacted] [sic] numerous medical problems are extreme and require the presence of his wife. He has never lived out of the United States and suggesting that he immigrate [sic] to Costa Rica would be unreasonable.

A brief will follow in thirty days.

That appeal was not accompanied by any additional evidence, and no information, argument, or documentation was subsequently submitted.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record contains a statement to which the applicant swore before an officer of USCIS on March 13, 2006. In it, she stated that she initially entered the United States on June 3, 2000. She also stated that she had sent her passport back to Costa Rica with a friend to have it stamped because she understood that her U.S. visa would be revoked if she did not exit the United States. She further stated that her first departure from the United States was on November 2, 2003 and that she then returned to the United States on January 3, 2004. The AAO notes that she then apparently used her fraudulently stamped passport to gain entry into the United States.

The record contains a photocopy of portions of the applicant's Costa Rican passport. That passport indicates that it was stamped, on June 21, 2000, at the Juan Santamaria airport, which is near San Jose, Costa Rica.

The evidence is sufficient to show that the applicant obtained entry into the United States by fraud and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Counsel did not contest the applicant's inadmissibility. Absent waiver, that inadmissibility is permanent. Because the AAO finds the applicant inadmissible pursuant to that section it need not address the additional finding of inadmissibility pursuant to section 212(a)(9)(B)(i) of the Act, which inadmissibility would last only ten years. The balance of this decision will pertain to whether waiver of the applicant's inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act is available, and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record contains a letter, dated May 8, 2005, from [REDACTED] a medical doctor in Trenton, New Jersey. That letter is not entirely legible. It states that the applicant's husband has been a patient at that practice since 2000, has high blood pressure that is under control with medication and has hearing loss for which he uses a hearing aid. It further states that the applicant's husband is under the care of a gastroenterologist for hyperplastic polyps and another condition that the AAO is unable to decipher from [REDACTED]'s handwriting, and has recently been diagnosed with osteoarthritis in both knees. It further states that the applicant's husband sees an ophthalmologist regularly for mild cataracts, pinguecula, suspected glaucoma, and refractive errors. The final sentence in the body of the letter reads, "[The applicant] also has [illegible]. The illegible word appears to be astigmatism. That letter does not discuss the current seriousness of those conditions or whether they are progressive.

In an affidavit dated July 18, 2006 the applicant's husband attested that he has high blood pressure, gastrointestinal distress, osteoporosis, and cataracts. The AAO notes that the final word in the body of [REDACTED] letter might conceivably be osteoporosis. The applicant's husband further stated that because of his high blood pressure he must follow a low sodium diet, and he therefore needs **someone capable of preparing** food consistent with that diet, which his wife has been doing since they married. The applicant's husband stated that he is too old to learn how to prepare food, but did not address the possibility that someone else might be able to prepare food for him.

In a letter dated, July 18, 2006, counsel echoed the applicant's husband's claim that he has high blood pressure, hypertension, hearing loss, gastrointestinal distress, osteoporosis, and cataracts. Counsel suggested that those are not minor problems, but provided no evidence pertinent to their severity.

The assertions, or suggestions, of counsel are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. The evidence submitted does not demonstrate the severity of the applicant's husband's medical conditions.

Whether the applicant's husband is unable at his age to learn to cook low sodium food is unclear to the AAO. In any event, however, the record contains no evidence, nor even the suggestion, that the applicant's husband would be unable to locate low sodium food in ordinary grocery stores or someone to prepare such food.

Further still, although counsel asserted, in the Form I-290B that "... suggesting that [the applicant's husband emigrate] to Costa Rica would be unreasonable," he provided no evidence, nor even argument, to establish that moving to Costa Rica would cause the applicant's husband extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has a very loving and devoted husband who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and

families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one’s spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.